



(Original Signature of Member)

116TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To direct the Federal Communications Commission to establish a broadcast incubator program to support the entry of new and diverse voices in the broadcasting industry by providing for an established broadcaster and an emerging broadcaster to enter into a qualifying incubation relationship.

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IN THE HOUSE OF REPRESENTATIVES

Mr. WALDEN introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To direct the Federal Communications Commission to establish a broadcast incubator program to support the entry of new and diverse voices in the broadcasting industry by providing for an established broadcaster and an emerging broadcaster to enter into a qualifying incubation relationship.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1   **SECTION 1. SHORT TITLE.**

2           This Act may be cited as the “Broadcast Diversity  
3 in Leadership Act”.

4   **SEC. 2. BROADCAST INCUBATOR PROGRAM.**

5           (a) FINDINGS.—Congress finds the following:

6               (1) Our Nation continues to respond to the on-  
7 going COVID–19 pandemic, and all Americans must  
8 have access to accurate, reliable information.

9               (2) Americans are fighting racial injustice, and  
10 promoting local and diverse media will play an im-  
11 portant role in limiting misinformation.

12              (3) Congress should commit to promoting  
13 media diversity and pledging to work with media en-  
14 tities and diverse stakeholders to develop common-  
15 ground solutions to eliminate barriers to media di-  
16 versity.

17              (4) The principle that an informed and engaged  
18 electorate is critical to a vibrant democracy is deeply  
19 rooted in our laws of free speech and underpins the  
20 virtues on which we established our Constitution: “in  
21 Order to form a more perfect Union, establish Jus-  
22 tice, insure domestic Tranquility, provide for the  
23 common defence, promote the general Welfare, and  
24 secure the Blessings of Liberty to ourselves and our  
25 Posterity”.

1           (5) Having independent, diverse, and local  
2           media that provide exposure to a broad range of  
3           viewpoints and the ability to contribute to the polit-  
4           ical debate is central to sustaining informed engage-  
5           ment.

6           (6) It is in the public interest to encourage  
7           source, content, and audience diversity on our Na-  
8           tion's shared media platforms.

9           (7) The survival of small, independent, and di-  
10          verse media outlets that serve diverse audiences and  
11          local media markets is essential to preserving local  
12          culture and building understanding on important  
13          community issues that impact the daily lives of resi-  
14          dents.

15          (8) Research by the American Society of News  
16          Editors, the Radio Television Digital News Associa-  
17          tion, the Pew Research Center, and others has docu-  
18          mented the continued challenges of increasing diver-  
19          sity among all types of media entities.

20          (9) With increasing media experience and so-  
21          phistication, it is even more important to have mi-  
22          nority participation in local media to ensure a di-  
23          verse range of information sources are available and  
24          different ideas and viewpoints are expressed to

1       strengthen social cohesion among different commu-  
2       nities.

3           (10) The constriction in small, independent,  
4       and diverse media outlets and limited participation  
5       of diverse populations in media ownership and deci-  
6       sionmaking are combining to negatively impact our  
7       goal of increasing local civic engagement and civic  
8       knowledge through increased voter participation,  
9       membership in civic groups, and knowledge of local  
10      political and civil information.

11          (11) The Advisory Committee on Diversity and  
12      Digital Empowerment of the Commission, and pred-  
13      ecessor Federal advisory committees, have rec-  
14      ommended for decades that the Commission adopt  
15      an incubator program providing structural rule  
16      changes to facilitate new and diverse entrants into  
17      the marketplace.

18          (12) The Broadcast Incubator Program estab-  
19      lished under this section is consistent with the na-  
20      tional policy described in section 257(b) of the Com-  
21      munications Act of 1934 (47 U.S.C. 257(b)): “to  
22      promote the policies and purposes of this Act favor-  
23      ing diversity of media voices, vigorous economic com-  
24      petition, technological advancement, and promotion  
25      of the public interest, convenience, and necessity”.

1 (b) ESTABLISHMENT.—Not later than 270 days after  
2 the date of the enactment of this Act, the Commission  
3 shall promulgate regulations establishing a program, to be  
4 known as the “Broadcast Incubator Program”, to support  
5 the entry of new and diverse voices in the broadcasting  
6 industry by providing for an established broadcaster and  
7 an emerging broadcaster to enter into a qualifying incuba-  
8 tion relationship with respect to one or more incubated  
9 stations of the emerging broadcaster.

10 (c) QUALIFYING INCUBATION RELATIONSHIP.—

11 (1) REQUIREMENTS.—The Commission shall  
12 establish in the regulations promulgated under sub-  
13 section (b) requirements for a qualifying incubation  
14 relationship under the Program that include the fol-  
15 lowing:

16 (A) Eligibility criteria that an established  
17 broadcaster and an emerging broadcaster shall  
18 meet in order to enter into such relationship,  
19 including—

20 (i) a limit, expressed in terms of a  
21 number of broadcast stations, on how  
22 many broadcast stations of which an  
23 emerging broadcaster may have effective  
24 control on the day before the date on  
25 which the established broadcaster and the

1 emerging broadcaster submit the applica-  
2 tion for the Program under subsection (d);  
3 (ii) a cap, expressed in terms of a dol-  
4 lar amount, on the gross revenue that the  
5 emerging broadcaster may earn during the  
6 calendar year ending most recently before  
7 the date on which the established broad-  
8 caster and the emerging broadcaster sub-  
9 mit the application for the Program under  
10 subsection (d); and  
11 (iii) a requirement for the established  
12 broadcaster to have effective control of—  
13 (I) if any incubated station under  
14 such relationship will be a radio  
15 broadcast station, any class of AM or  
16 FM radio broadcast station (except  
17 for a low power radio station or a  
18 radio translator station); and  
19 (II) if any incubated station  
20 under such relationship will be a tele-  
21 vision broadcast station, any class or  
22 assignment of television broadcast sta-  
23 tion (except for a low power television  
24 station or a television translator sta-  
25 tion).

1 (B) Criteria for the incubation activities  
2 that the established broadcaster shall perform  
3 as part of such relationship. Such activities  
4 shall include the provision by the established  
5 broadcaster to the emerging broadcaster of  
6 training, financing, or access to resources.

7 (C) A requirement that the established  
8 broadcaster and the emerging broadcaster es-  
9 tablish mutually agreed-upon goals for such re-  
10 lationship.

11 (D) A requirement that the established  
12 broadcaster and the emerging broadcaster es-  
13 tablish a mutually agreed-upon limitation on  
14 the amount of equity (if any) that the estab-  
15 lished broadcaster may hold in the emerging  
16 broadcaster.

17 (E) A minimum duration of 2 years for  
18 such relationship.

19 (F) An option, which may be exercised  
20 upon the agreement of the established broad-  
21 caster and the emerging broadcaster, for such  
22 relationship to continue on an ongoing basis.

23 (G) A requirement that, upon successful  
24 completion of such relationship in accordance  
25 with the application approved by the Commis-

1           sion under subsection (d) and in compliance  
2           with the other requirements for the Program  
3           established by the Commission, the emerging  
4           broadcaster shall have effective control of each  
5           incubated station under such relationship.

6           (2) DETERMINATION OF SUCCESSFUL RELA-  
7           TIONSHIP.—The Commission shall provide in the  
8           regulations promulgated under subsection (b) for the  
9           determination of whether a qualifying incubation re-  
10          lationship is being carried out successfully or has  
11          been completed successfully to be made by the Com-  
12          mission on a case-by-case basis based on information  
13          provided in the application process and related forms  
14          and materials.

15         (d) APPLICATION PROCESS.—

16           (1) JOINT APPLICATION.—The Commission  
17           shall require an established broadcaster and an  
18           emerging broadcaster who propose to enter into a  
19           qualifying incubation relationship under the Pro-  
20           gram to submit to the Commission a joint applica-  
21           tion for participation in the Program.

22           (2) PROCESS, FORMS, AND MATERIALS.—The  
23           Commission shall develop an application process and  
24           related forms and materials necessary to carry out  
25           the Program.



1 (3) APPLICATION REVIEW PROCESS.—

2 (A) DEADLINE.—

3 (i) IN GENERAL.—Except as provided  
4 in clause (ii) and subparagraph (B), the  
5 Commission shall approve or deny an ap-  
6 plication for participation in the Program  
7 not later than 90 days after the date of the  
8 submission of the application.

9 (ii) ADDITIONAL TIME NEEDED BY  
10 COMMISSION.—If the Commission deter-  
11 mines that, because an excessive number of  
12 applications have been filed at one time,  
13 the Commission needs additional time for  
14 employees of the Commission to process  
15 the applications, the Commission may ex-  
16 tend the deadline described in clause (i) for  
17 not more than 45 days.

18 (B) OPPORTUNITY FOR APPLICANT TO  
19 CURE DEFICIENCY.—If the Commission deter-  
20 mines that an application is materially defi-  
21 cient, the Commission shall provide the appli-  
22 cants a 15-day period to cure the defect before  
23 denying the application. If such period would  
24 extend beyond the deadline under subparagraph  
25 (A) for approving or denying the application,

1           such deadline shall be extended through the end  
2           of such period.

3           (C) EFFECT OF DENIAL.—Denial of an ap-  
4           plication for participation in the Program shall  
5           not preclude the applicants from resubmitting  
6           the application or any applicant from submit-  
7           ting a new application for participation in the  
8           Program at a later date.

9           (4) CERTIFICATIONS.—The Commission shall  
10          require each applicant submitting an application for  
11          participation in the Program to certify to the Com-  
12          mission in the application that, as of the date of the  
13          submission of the application—

14                (A) the applicant intends to participate, in  
15                good faith, in the Program;

16                (B) in the case of an emerging broad-  
17                caster, the applicant would be unable, without  
18                the qualifying incubation relationship proposed  
19                in the application—

20                   (i) in the case of any incubated sta-  
21                   tion of which the applicant has effective  
22                   control as of such date, to continue to suc-  
23                   cessfully operate such station; and

24                   (ii) in the case of any incubated sta-  
25                   tion of which the applicant proposes to ac-

1                   quire effective control after such date, to  
2                   acquire such effective control;

3                   (C) the applicants have established the  
4                   mutually agreed-upon goals required by sub-  
5                   section (c)(1)(C); and

6                   (D) the applicants have established the  
7                   mutually agreed-upon limitation required by  
8                   subsection (c)(1)(D).

9                   (5) LIMITATION ON REAPPLICATION BY ESTAB-  
10                  LISHED BROADCASTER AFTER FAILED RELATION-  
11                  SHIP.—If, in 3 or more instances, the Commission  
12                  has terminated the participation of an established  
13                  broadcaster in the Program under subsection (f) and  
14                  determined that such established broadcaster was  
15                  primarily at fault in causing the circumstances on  
16                  which the termination was based, such established  
17                  broadcaster may not submit another application for  
18                  participation in the Program.

19                  (e) WAIVER OF LOCAL OWNERSHIP RULES.—

20                  (1) IN GENERAL.—If the Commission makes  
21                  the determination described in paragraph (2) with  
22                  respect to an established broadcaster and an emerg-  
23                  ing broadcaster, the Commission shall, not earlier  
24                  than 1 year after making such determination, grant  
25                  to the established broadcaster a waiver of paragraph

1 (a) or (b) of section 73.3555 of title 47, Code of  
2 Federal Regulations (or any successor regulation) to  
3 the extent necessary to permit the established broad-  
4 caster—

5 (A) to hold a cognizable interest in any in-  
6 cubated station under the qualifying incubation  
7 relationship; and

8 (B) to hold a cognizable interest in—

9 (i) if the established broadcaster had  
10 effective control of an AM or FM radio  
11 broadcast station (except for a low power  
12 radio station or a radio translator station)  
13 on the day before the date on which the es-  
14 tablished broadcaster and the emerging  
15 broadcaster submitted the application for  
16 the Program under subsection (d), 1 radio  
17 broadcast station in excess of the number  
18 of radio broadcast stations in which the es-  
19 tablished broadcaster is permitted to hold  
20 a cognizable interest under section  
21 73.3555(a) of such title in a radio market  
22 that is—

23 (I) specified in paragraph (3)(A);

24 and

1 (II) selected by the established  
2 broadcaster;

3 (ii) if the established broadcaster had  
4 effective control of a television broadcast  
5 station (except for a low power television  
6 station or a television translator station)  
7 on the day before the date on which the es-  
8 tablished broadcaster and the emerging  
9 broadcaster submitted the application for  
10 the Program under subsection (d), 1 tele-  
11 vision broadcast station in excess of the  
12 number of television broadcast stations in  
13 which the established broadcaster is per-  
14 mitted to hold a cognizable interest under  
15 section 73.3555(b) of such title in a DMA  
16 that is—

17 (I) specified in paragraph (3)(A);  
18 and

19 (II) selected by the established  
20 broadcaster; or

21 (iii) if the established broadcaster had  
22 effective control of an AM or FM radio  
23 broadcast station (except for a low power  
24 radio station or a radio translator station)  
25 and a television broadcast station (except

1 for a low power television station or a tele-  
2 vision translator station) on the day before  
3 the date on which the established broad-  
4 caster and the emerging broadcaster sub-  
5 mitted the application for the Program  
6 under subsection (d), either (at the option  
7 of the established broadcaster)—

8 (I) 1 radio broadcast station in  
9 excess of the number of radio broad-  
10 cast stations in which the established  
11 broadcaster is permitted to hold a  
12 cognizable interest under section  
13 73.3555(a) of such title in a radio  
14 market determined in the same man-  
15 ner as under clause (i); or

16 (II) 1 television broadcast station  
17 in excess of the number of television  
18 broadcast stations in which the estab-  
19 lished broadcaster is permitted to hold  
20 a cognizable interest under section  
21 73.3555(b) of such title in a DMA de-  
22 termined in the same manner as  
23 under clause (ii).

24 (2) DETERMINATION OF COMMISSION DE-  
25 SCRIBED.—The determination described in this

1 paragraph is a determination that an established  
2 broadcaster and an emerging broadcaster have en-  
3 tered into and are successfully carrying out a quali-  
4 fying incubation relationship under the Program in  
5 accordance with an application approved by the  
6 Commission under subsection (d) and are in compli-  
7 ance (with respect to such relationship) with the  
8 other requirements for the Program established by  
9 the Commission.

10 (3) SPECIFICATION OF RADIO MARKETS AND  
11 DMAS.—

12 (A) IN GENERAL.—The radio markets or  
13 DMAs (as the case may be) specified in this  
14 subparagraph are—

15 (i) if the highest-ranked radio market  
16 or DMA in which an incubated station  
17 under the qualifying incubation relation-  
18 ship is located is ranked not lower than 25,  
19 all radio markets or DMAs;

20 (ii) if the highest-ranked radio market  
21 or DMA in which an incubated station  
22 under the qualifying incubation relation-  
23 ship is located is ranked lower than 25 but  
24 not lower than 75, the radio markets or  
25 DMAs ranked lower than 25;

1 (iii) if the highest-ranked radio mar-  
2 ket or DMA in which an incubated station  
3 under the qualifying incubation relation-  
4 ship is located is ranked lower than 75 but  
5 not lower than 100, the radio markets or  
6 DMAs ranked lower than 75;

7 (iv) if the highest-ranked radio mar-  
8 ket or DMA in which an incubated station  
9 under the qualifying incubation relation-  
10 ship is located is ranked lower than 100  
11 but not lower than 150, the radio markets  
12 or DMAs ranked lower than 100; and

13 (v) if the highest-ranked radio market  
14 or DMA in which an incubated station  
15 under the qualifying incubation relation-  
16 ship is located is ranked lower than 150,  
17 the radio markets or DMAs ranked lower  
18 than 150.

19 (B) MARKET RANKINGS.—For purposes of  
20 subparagraph (A)—

21 (i) a DMA ranking refers to the  
22 rankings of DMAs based on the number of  
23 television households, as determined by  
24 Nielsen Media Research and published  
25 most recently before the granting of the



1 waiver in the Nielsen Station Index Direc-  
2 tory and Nielsen Station Index United  
3 States Television Household Estimates (or  
4 any successor publication); and

5 (ii) a radio market ranking refers to  
6 the rankings of radio markets based on  
7 population, as determined by Nielsen  
8 Media Research and published most re-  
9 cently before the granting of the waiver in  
10 Radio Market Survey Population,  
11 Rankings & Information (or any successor  
12 publication).

13 (4) TERMINATION OF WAIVER.—The Commis-  
14 sion shall specify in the regulations promulgated  
15 under subsection (b) when a waiver granted under  
16 paragraph (1) shall terminate.

17 (f) TERMINATION OF PARTICIPATION IN PROGRAM.—

18 (1) IN GENERAL.—Except as provided in para-  
19 graph (2), if the Commission determines that an es-  
20 tablished broadcaster and an emerging broadcaster  
21 are not successfully carrying out a qualifying incuba-  
22 tion relationship in accordance with the application  
23 approved by the Commission under subsection (d) or  
24 are not in compliance (with respect to such relation-  
25 ship) with the other requirements of the Program

1 established by the Commission, the Commission  
2 shall terminate the qualifying incubation relationship  
3 under the Program and the participation of the es-  
4 tablished broadcaster and the emerging broadcaster  
5 in the Program with respect to such relationship.

6 (2) EXCEPTION FOR TRANSFER OF INCUBATED  
7 STATION.—

8 (A) IN GENERAL.—The transfer by an  
9 emerging broadcaster of effective control of an  
10 incubated station to another person shall not  
11 terminate the qualifying incubation relationship  
12 under the Program, and such other person shall  
13 be substituted as a party to such relationship,  
14 if—

15 (i) such other person meets the re-  
16 quirements for an emerging broadcaster  
17 under the Program;

18 (ii) such other person and the estab-  
19 lished broadcaster continue, with respect to  
20 such station, to successfully carry out the  
21 qualifying incubation relationship in ac-  
22 cordance with the application approved by  
23 the Commission under subsection (d) and  
24 to comply with the other requirements of

1 the Program established by the Commis-  
2 sion; and

3 (iii) in a case in which the original  
4 emerging broadcaster retains effective con-  
5 trol of any incubated station under the  
6 qualifying incubation relationship, such  
7 emerging broadcaster and the established  
8 broadcaster continue, with respect to any  
9 such station, to successfully carry out the  
10 qualifying incubation relationship in ac-  
11 cordance with the application approved by  
12 the Commission under subsection (d) and  
13 to comply with the other requirements of  
14 the Program established by the Commis-  
15 sion.

16 (B) TREATMENT AS SINGLE QUALIFYING  
17 INCUBATION RELATIONSHIP.—If, after a trans-  
18 fer described in subparagraph (A), the original  
19 emerging broadcaster retains effective control of  
20 any incubated station under the qualifying incu-  
21 bation relationship, any such station and any  
22 station of which effective control has been so  
23 transferred shall be treated as being part of a  
24 single qualifying incubation relationship.

25 (3) REVOCATION OF WAIVER PROHIBITED.—

1 (A) IN GENERAL.—Except as provided in  
2 subparagraph (B), the Commission may not, as  
3 a penalty for or consequence of the termination  
4 under paragraph (1) of a qualifying incubation  
5 relationship between an established broadcaster  
6 and an emerging broadcaster, revoke any waiver  
7 granted to the established broadcaster under  
8 subsection (e)(1) as a result of such relation-  
9 ship.

10 (B) EXCEPTION FOR WILLFUL AND KNOW-  
11 ING VIOLATIONS.—If the Commission deter-  
12 mines that the circumstances on which the ter-  
13 mination under paragraph (1) of a qualifying  
14 incubation relationship between an established  
15 broadcaster and an emerging broadcaster is  
16 based involve a willful and knowing violation by  
17 the established broadcaster of this section or a  
18 regulation promulgated under this section, the  
19 Commission may revoke any waiver granted to  
20 the established broadcaster under subsection  
21 (e)(1) as a result of such relationship.

22 (g) EXCLUSION FROM QUADRENNIAL REVIEW.—The  
23 Program, the regulations promulgated by the Commission  
24 under this section, and any waiver granted under sub-  
25 section (e)(1) shall not be subject to review under section

1 202(h) of the Telecommunications Act of 1996 or section  
2 11 of the Communications Act of 1934 (47 U.S.C. 161).

3 (h) IMPLEMENTATION AND ENFORCEMENT.—The  
4 Commission shall implement and enforce this section as  
5 if this section is a part of the Communications Act of 1934  
6 (47 U.S.C. 151 et seq.). A violation of this section, or a  
7 regulation promulgated under this section, shall be consid-  
8 ered to be a violation of the Communications Act of 1934,  
9 or a regulation promulgated under such Act, respectively.

10 (i) CONSIDERATION IN COMMUNICATIONS MARKET-  
11 PLACE REPORT.—Section 13(d) of the Communications  
12 Act of 1934 (47 U.S.C. 163(d)) is amended by adding at  
13 the end the following:

14 “(4) CONSIDERING EFFECTIVENESS OF BROAD-  
15 CAST INCUBATOR PROGRAM.—In assessing the state  
16 of competition under subsection (b)(1) and regu-  
17 latory barriers under subsection (b)(3), the Commis-  
18 sion, with the input of the Office of Communications  
19 Business Opportunities of the Commission, shall  
20 consider the efficacy of the Broadcast Incubator  
21 Program established under section 2 of the Broad-  
22 cast Diversity in Leadership Act in promoting com-  
23 petition.”.

24 (j) RULE OF CONSTRUCTION.—Nothing in this sec-  
25 tion shall be construed to limit the development by the

1 Commission of additional programs or policies to promote  
2 the entry of new and diverse voices in the broadcasting  
3 industry.

4 (k) DEFINITIONS.—In this section:

5 (1) BROADCAST STATION.—The term “broad-  
6 cast station” has the meaning given such term in  
7 section 3 of the Communications Act of 1934 (47  
8 U.S.C. 153).

9 (2) COGNIZABLE INTEREST.—The term “cog-  
10 nizable interest” has the meaning given such term in  
11 note 1 to section 73.3555 of title 47, Code of Fed-  
12 eral Regulations (as in effect on the date of the en-  
13 actment of this Act).

14 (3) COMMISSION.—The term “Commission”  
15 means the Federal Communications Commission.

16 (4) DMA.—The term “DMA” means a Des-  
17 ignated Market Area, as determined by Nielsen  
18 Media Research and published in the Nielsen Sta-  
19 tion Index Directory and Nielsen Station Index  
20 United States Television Household Estimates (or  
21 any successor publication).

22 (5) EMERGING BROADCASTER.—The term  
23 “emerging broadcaster” means a person who—

24 (A) has effective control of a broadcast  
25 station (including any class or assignment of

1 television broadcast station and any class of  
2 AM or FM radio broadcast station) that such  
3 person would be unable to continue to operate  
4 successfully without a qualifying incubation re-  
5 lationship under the Program; or

6 (B) plans to acquire effective control of a  
7 broadcast station (including any class or assign-  
8 ment of television broadcast station and any  
9 class of AM or FM radio broadcast station)  
10 that such person would be unable to acquire  
11 without a qualifying incubation relationship  
12 under the Program.

13 (6) ESTABLISHED BROADCASTER.—The term  
14 “established broadcaster” means a person who—

15 (A) has effective control of a broadcast  
16 station, including any class or assignment of  
17 television broadcast station (except for a low  
18 power television station or a television trans-  
19 lator station) and any class of AM or FM radio  
20 broadcast station (except for a low power radio  
21 station or a radio translator station); and

22 (B) is established in the broadcasting in-  
23 dustry, as determined by the Commission.

24 (7) INCUBATED STATION.—The term “incu-  
25 bated station” means a broadcast station—

1 (A) of which an emerging broadcaster has  
2 (or plans to acquire) effective control; and

3 (B) with respect to which an established  
4 broadcaster performs (or will perform) incuba-  
5 tion activities as part of a qualifying incubation  
6 relationship under the Program.

7 (8) LOW POWER TELEVISION STATION.—The  
8 term “low power television station” does not include  
9 a low power television station that has been accorded  
10 primary status as a Class A television licensee under  
11 section 73.6001(a) of title 47, Code of Federal Reg-  
12 ulations.

13 (9) PROGRAM.—The term “Program” means  
14 the Broadcast Incubator Program established by the  
15 regulations promulgated under subsection (b).

16 (10) RADIO MARKET.—The term “radio mar-  
17 ket” means a radio market, as determined by  
18 Nielsen Media Research and published in Radio  
19 Market Survey Population, Rankings & Information  
20 (or any successor publication).